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International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 1405/2005

Views adopted by the Committee at its 110th session (10–28 March 2014)

Submitted by:	Mikhail Pustovoit (not represented by counsel)
Alleged victim:	The author
State party:	Ukraine
Date of communication:	21 April 2005 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 3 June 2005 (not issued in document form)
Date of adoption of Views:	20 March 2014
Subject matter:	Life imprisonment after unfair trial
Procedural issues:	Substantiation of claims; examination by another international body
Substantive issues:	Equality before the law; torture, cruel, inhuman or degrading treatment or punishment; defence rights; right to examine witnesses; right not to be compelled to confess guilt; freedom to seek, receive and impart information
Articles of the Covenant:	2 (1); 4 (2); 7; 10 (1) and (2); 14 (1), (2) and (3) (b), (d), (e) and (g); and 19 (2)
Articles of the Optional Protocol:	2 and 5 (2) (a)

* Reissued for technical reasons on 18 June 2014.

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Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (110th session)

concerning

Communication No. 1405/2005**

Submitted by:	Mikhail Pustovoit (not represented by counsel)
Alleged victim:	The author
State party:	Ukraine
Date of communication:	21 April 2005 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 20 March 2014,

Having concluded its consideration of communication No. 1405/2005, submitted to the Human Rights Committee by Mikhail Pustovoit under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Mikhail Pustovoit, a Ukrainian national born in 1977 serving a life sentence in Ukraine. He claims to be the victim of a violation by Ukraine of his rights under articles 2 (1); 4 (2); 7; 10; 14 (1), (2), and (3) (b), (d), (e) and (g); and 19 (2), of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the State party on 25 October 1991. The author is unrepresented.

Factual background

2.1 On 13 May 2000, two young women, E.G. and O.P., were murdered in E.G.'s apartment. The author and another man, I.Y., were in the apartment when the murders took place, while one Mr. S.P. remained outside. The author denies involvement in the murder and explains that I.Y. ordered him to take a handbag from the crime scene; he took the

** The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Ms. Zonke Zanele Majodina, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Victor Manuel Rodriguez Rescia, Mr. Fabián Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili, Ms. Margo Waterval and Mr. Andrei Paul Zlătescu.

handbag and burnt it at his home. He did not report the murders, as I.Y. had threatened to kill him.

2.2 On 15 May 2000, the author was arrested on suspicion of murder. Police officers tortured and battered him to extract a confession. The Head of the Criminal Investigation Unit of the Izyaslav Department of the Interior ("the Head of Unit") participated in the ill-treatment, which was witnessed by the co-accused S.P.

2.3 On 8 May 2001, Khmelnitsk Regional Court ("the Regional Court") found the author guilty of theft or damage of documents, stamps and seals (article 193, part 1, of the Criminal Code), banditry (article 142, part 3) and premeditated murder under aggravating circumstances (article 93 (a), (d), (f) and (j)) and sentenced him to life imprisonment with property seizure. According to the ruling, the court rejected the claims of the author and S.P. regarding the use of unlawful methods of investigation, for lack of evidence. It referred to a video recording on which the author calmly, consecutively and in detail related the crime events, and to his testimony that he held E.G. while I.Y was stabbing her.

2.4 The author claims his innocence, and states that his fingerprints were not found at the crime scene and that the pre-trial investigation established no evidence showing his guilt. He claims that his conviction was based on assumptions and refers to the conclusion by an expert that O.P. was stabbed by a left-handed person. When, as a right-handed person, he requested the court to order another examination by a different expert, the first expert's conclusions were removed from the case file. Furthermore, the judge of the Regional Court rejected his complaints about torture during the pre-trial investigation. In court, the Head of Unit denied that he was present during the author's interrogations, despite a video recording proving the contrary, which was viewed by the court. The investigator from the Prosecutor's Office claimed that officers of the Criminal Investigation Unit were present for security reasons during the investigation. The forensic medical expert, who had examined the author in the presence of the police officers who had tortured him, stated that his body showed no marks of beatings. The author requested a new examination and showed his injuries (strained wrists, dislocated vertebrae and missing teeth) to the court. However, the court was satisfied with what the author describes as a "forged" certificate presented by the prosecutor, stating that the author had not requested the assistance of the medical unit of Khmelnitsk Pre-Trial Detention Centre No. 29 (the "SIZO").

2.5 On 8 May 2001, after being convicted by the Regional Court, the author was transferred to a SIZO detention centre.[1] He was kept in a cell designed for one person until 13 December 2001, but sometimes up to three persons were detained there. The cell was cold, damp and poorly lit, and had no regular water supply, strong draughts and a wet concrete floor. The radio did not work. Once a week he was given a few minutes in a bathroom with barely dripping water to shave and wash. Regardless of the weather conditions, he was forced to go outside to the courtyard.

2.6 On 9 May 2001, he was beaten in the corridor, as a "preventive measure", on the orders of the Chief Security Officer. On 14 May 2001, he complained of psychological pressure and physical hardship, and of the poor detention conditions, to a monitoring prosecutor visiting the SIZO. The prosecutor replied that all complaints regarding conditions of detention should be submitted to the Head of the SIZO first. At a later point, the author was denied dental services, except once when his tooth was extracted. He lost 14 teeth, which were damaged because of the torture and beatings by police officers, during

[1] He was detained there between 23 May 2000 and 12 September 2005.

the pre-trial investigation, and in the SIZO. He is unable to properly digest food and suffers from a chronic gastrointestinal illness.

2.7 When the author was acquainting himself with the Regional Court's trial transcript, his hands were handcuffed, preventing him from taking notes. The authorities disregarded his complaints that the transcript was not bound, that pages were unnumbered or missing, and that it had been drafted to match the indictment. His request to study the criminal case file to prepare his defence in the appeal court was missing. He was informed orally that the law did not provide for such a possibility.

2.8 On an unspecified date, he requested to be personally present during the examination, by the Regional Court, of his comments on the trial transcript. On 19 September 2001, he was informed that the court hearing in question had taken place on 17 September 2001.[2]

2.9 On an unspecified date, he was brought to the Supreme Court for the examination of his appeal. He was blindfolded with a hood and his hands were kept continuously handcuffed behind his back. The handcuffs were removed in the Kiev Pre-Trial Detention Centre.

2.10 On 27 November 2001, the Supreme Court dismissed the author's appeal against his conviction. As transpires from the ruling, in his appeal the author submitted that he had been forced to confess guilt as a result of unlawful methods of investigation and that both victims had been murdered by I.Y. He further argued that from the outset of the investigation, all three co-accused were represented by the same lawyer, despite a clear conflict of interest as well as obvious contradictions in their testimonies. He also complained in his appeal that he had been subjected to unlawful methods of investigation and, hence, had been forced to confess to the murder.

2.11 According to the ruling, however, the Supreme Court established that the author's claims about the use of I.Y.'s slanderous testimony as a basis for his conviction were unfounded, since this testimony was corroborated by testimony from other convicts, victims and witnesses, the contents of the crime scene examination report and experts' conclusions. The Supreme Court held that when the co-accused started giving contradictory testimonies, the author had immediately been assigned another lawyer, as of 22 June 2000. It also concluded that the author's and I.Y.'s claims about the use of unlawful methods of investigation to confess guilt had been examined but dismissed as unsubstantiated.

2.12 The author claims that he complained orally to the court about ill-treatment by law enforcement officers and states that he was unable to complain in writing, as he remained handcuffed, inside a secure metal cage, when the Supreme Court examined his appeal.

2.13 When he returned to the SIZO on 13 December 2001, the conditions of detention of those sentenced to life imprisonment became unbearable. Despite his special status as a former officer of the State Department of Ukraine for the Execution of Sentences,[3] he was detained as a common criminal. As such, he shared a cell with two other inmates, some of whom had numerous convictions, were in transit to or from other penitentiaries, or were suffering from tuberculosis. He was often transferred to cells that had previously been occupied by inmates infected with tuberculosis.

[2] The notification, dated 12 September 2001, states that on 17 September 2001, the Regional Court will examine the comments made by S.P. and I.Y. on the trial transcript. The author provided no copy of his comments on the transcript, or of his request to be present during their examination in court.

[3] From 1998 to 2000, the author was a junior inspector at Zamkovoy Special Regime Colony No. 58 in the Khmelnitsk region.

2.14 On an unspecified date, the author asked the SIZO's Deputy Head for Social Matters to explain why his complaints about his unjust conviction and the inhumane conditions of his detention had not been dispatched to the Prosecutor's Office and the courts. Two days later, he and other inmates were battered by masked men. This happened shortly after the visit to the SIZO of two high-ranking officers of the State Department for the Execution of Sentences (Khmelnitsk region), who apparently despised the author from the time of his service there. Thereafter, all mass beatings of convicts in the SIZO were held with the participation of the Special Rapid Response Unit of the State Department for the Execution of Sentences and troops of the Ministry of the Interior, in the presence of the aforementioned persons and the SIZO administration. The author was also beaten individually in the presence of SIZO officials.

2.15 Starting from September 2003, the quality of the food deteriorated and the author was not allowed to get off his plank bed between 10 p.m. and 6 a.m., even to relieve himself. SIZO staff could view the toilet through a peephole and prisoners had to relieve themselves in front of their cellmates. Starting from May 2003, the author and the life prisoners were forbidden from purchasing essential goods in the SIZO shop.

2.16 On 24 June 2004, the author and his cellmate were severely beaten by masked men, in their cell and in the courtyard. There were traces of blood in the courtyard from other life prisoners beaten on the same day. The author was kicked in the face, hit with truncheons on his kidneys and back, and hit on the thorax. He sought medical assistance, but the Chief Security Officer replied that the beatings of the inmates sentenced to life imprisonment would be repeated in a week. Unable to withstand another round of beatings, one of the inmates hanged himself on 1 July 2004, during the night. In order to cover up the beatings, the administration forced inmates to write retractions and affidavits to the effect that they had never suffered any ill-treatment. Fearing for his life and health, the author wrote a similar affidavit.

The complaint

3.1 The author claims that his handcuffing and placement in a metal cage during the examination of his appeal by the Supreme Court violated his rights under articles 7 and 14 (1) and (3) (b) and (d), of the Covenant. He also claims that the conditions of his transportation to the Supreme Court breached article 7 of the Covenant.

3.2 He claims a violation of his rights under articles 7 and 14 (3) (g) of the Covenant, as he was beaten and tortured by officials during the pre-trial investigation to force him to confess guilt. He claims a violation of article 7 of the Covenant as he was beaten, by officials, in detention, and on account of the conditions of detention in the SIZO, which raises issues under article 10 of Covenant. He further claims a violation of article 10 (1) and (2) of the Covenant, regarding the conditions of detention in the GVK-96 penitentiary colony.

3.3 He claims that his conviction and sentence were incorrect and contrary to articles 2 (1), 4 (2) and 19 (2) of the Covenant. His conviction was based on assumptions and on I.Y.'s incriminating testimony at th. pre-trial investigation, despite I.Y. retracting it before both the Regional Court and the Supreme Court.[4] These complaints appear to raise issues under article 14 (1) and (3) (g) of the Covenant.

[4] There is no document on file to support the claim that I.Y. retracted his earlier testimony. On the contrary, it appears from the Regional Court's judgement that I.Y. testified against the author.

3.4 He claims a violation of article 14 (3) (b) and (e) of the Covenant, as the court rejected his request to have certain witnesses questioned and for experts to carry out additional examinations.

3.5 The author also claims a violation of his rights of defence, which raises issues under article 14 (3) (b) and (d) of the Covenant, as he was handcuffed when acquainting himself with the trial transcript, as his request to familiarize himself with the criminal case file before the appeal hearing was ignored, and as his ex officio lawyer was ineffective and was present only when investigative actions were video-recorded; in addition, the author never met with him privately but only in the presence of the investigator during the pre-trial investigation or during the trial. The lawyer took away the only copy of the author's indictment act and disregarded his complaints.

3.6 He claims a violation under article 19 (2) of the Covenant, as prior to his conviction, a number of newspapers' reports designated him as a murderer, which raises issues under article 14 (2) of the Covenant.

3.7 He also claims a violation of article 2 (3) (a) of the Covenant, without further explanation.

State party's observations on admissibility and on the merits

4.1 In its notes verbales of 27 December 2005 and 28 April 2006, the State party submitted its observations on the admissibility and merits and adduced documents related to the case. Preliminarily, it notes that the fact that it does not deal with every single claim raised by the author does not imply that these claims are admitted.

4.2 The State party maintains that the communication is inadmissible under article 5 (2) (a) of the Optional Protocol, because on 24 December 2004, the author applied to the European Court of Human Rights, and his case was registered on 11 April 2005.

4.3 On the merits, the State party submits that article 2 (1) of the Covenant is of a general nature, and that its violation is preconditioned upon the finding of a violation of substantive rights under the Covenant. As to the claim under article 2 (3) (a), it argues that the author had an effective remedy at his disposal and effectively availed himself thereof by filing about 40 complaints and applications to various domestic authorities. The availability of an effective remedy does not necessarily imply a positive outcome for claimants.

4.4 As to the alleged violation of article 4 (2) of the Covenant, the State party maintains that the author submits no explanation in support. It assumes, therefore, that his allegations are linked with those made under article 7. Hence, the State party submits that the author failed to provide any evidence, especially medical, to support his allegations of beatings. On 8 May 2001, the Regional Court examined complaints by his co-accused regarding their alleged beatings during the pre-trial investigation and concluded that "no substantiation thereof was established". The State party argues, therefore, that for the burden of proof to be shifted to the State party, the author should first substantiate sufficiently his allegations. In the absence of any substantiation by the author whatsoever, this part of the complaint is unfounded.[5]

[5] It appears from the documents submitted by the State party that after the author's case was registered, an internal investigation was initiated into his allegations of ill-treatment by the police officers to force him to confess. On 5 and 10 September 2005, the Ministry of the Interior and a Deputy Prosecutor General reported that the allegations had been examined by the Supreme Court and refuted as unfounded. The Deputy Prosecutor General submitted that the Court had viewed a recording on which the author calmly, consecutively and in detail related the crime events. The author's claim had

4.5 Regarding the author's conditions of detention, the State party submits a number of affidavits whereby three SIZO inmates[6] and officials[7] qualify as satisfactory the general conditions of detention. Regarding the author's detention with ordinary criminals, despite his special status, it notes that on 8 July 2001 the author had requested the SIZO administration to "place anybody else" with him, and that prolonged solitary confinement may amount to a violation of article 7 of the Covenant.[8] This claim is therefore unfounded.

4.6 The State party adds that the author's allegations regarding his handcuffing and blindfolding during his transportation to the Supreme Court are groundless. Even if they had been proven, the State party notes that such measures may be applied as precautionary measures not intended to humiliate or debase. The Law on Police allows the handcuffing of detainees while they are being escorted, if there are grounds to believe that they could

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been rebutted by testimonies by an investigator from the District Prosecutor's Office and by the head of the Criminal Investigation Unit, and by experts' conclusions. The author had sent 33 complaints from the SIZO but had never complained of beatings or humiliation. On 10 September 2005, the State Department for the Execution of Sentences stated that throughout his detention in the SIZO, the author had not been subjected to pressure, psychologically or physically. On 28 September 2005, the Khmelnitsk Regional Department of Security Services submitted that former officers of the Izyaslav Department of the Interior, including its Head of Unit, A., had participated in investigating the crime. They had testified that the author's co-accused had pleaded guilty when interrogated and had claimed his involvement in the crime. The officers had denied having used pressure against the co-accused, either psychologically or physically. Due to the destruction of files at the central district hospital, it was impossible to establish whether medical assistance had been provided to the detainees during the pre-trial investigation. The District Prosecutor's Office had received no complaints of unlawful actions by police officers between September 2000 and September 2005. On 5 October 2005, the Ministry of the Interior reported that the author had not complained of ill-treatment to the law enforcement authorities and that his allegations could not be confirmed.

[6] Three inmates, who shared a cell with the author in 2002 and 2003, submit that cells were heated in winter, that the water supply was regular, and that the SIZO administration used no force or degrading treatment towards the detainees, in particular the author or those sentenced to life imprisonment. Inmate Z. states that the author did not complain about the conditions of detention. The statements are handwritten and are signed by the inmates.

[7] On 2 September 2005, a deputy head of the SIZO reported that during his incumbency, no instructions were given to forbid purchases from the SIZO shop by SIZO detainees. On the same date, the SIZO medical unit stated that the cells were disinfected daily. Furthermore, an ad interim head of the SIZO stated that the detainees took a shower and had their linen cleaned weekly, they were regularly provided with drinking water, their cells were lit by 75- 100 watt bulbs and were heated to 18°C minimum. On 10 September 2005, the State Department on the Execution of Sentences reported that the cells where the author was detained contained the necessary number of berths, were adequately lit, and were equipped with washbasins and toilets, separated by a partition; that windows ensured adequate ventilation; and that the conditions of detention complied with sanitary and hygiene standards. The author and those sentenced to life imprisonment were provided with bedding and food, as required, and they were afforded a one-hour period of outdoor exercise and an uninterrupted eight-hour sleep, daily. Throughout his detention in the SIZO, the author was not placed in solitary confinement, nor was he subjected to pressure either psychologically or physically. His health condition was satisfactory, which is confirmed by medical documents. On 11 November 2003, he sought and obtained dental care. He had not been detained with inmates with tuberculosis. He did not complain of the conditions of his detention to the courts. On 10 September 2005, a Deputy Prosecutor General confirmed that the conditions of detention complied with the relevant standards and that the author had not been held together with inmates with tuberculosis. Furthermore, the author had submitted 33 complaints, including with regard to the conditions of his pre-trial detention, and his complaints had been examined.

[8] Reference is made to Committee's general comment No. 20 (1989) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 6, *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40* (A/47/40), annex VI, sect. A.

escape or inflict injuries on themselves or others. Section 25 of the Order of the State Department for the Execution of Sentences on the Adoption of the Penitentiary Routine Rules ("the Order") provides that life prisoners shall be handcuffed every time that they are escorted.

4.7 The State party adds that although blindfolding is not provided for under domestic law, it may be applied exceptionally in cases where the life or health of the blindfolded person is endangered. Blindfolding is subject to authorization, which was not sought in the present case. With reference to case law of the European Court of Human Rights,[9] the State party submits that nothing shows that the blindfolding alleged by the author to have been carried out had caused him injuries or physical or mental suffering.

4.8 As regards the author's access to medical treatment, the State party provides a copy of his SIZO medical file, which describes his examinations by a doctor and the medical assistance provided.[10] According to the medical file, no bruises or other injuries were found on the author's body, contrary to his allegations of systematic beatings. The State party also appends a medical certificate issued by the SIZO medical unit on 2 September 2005 showing that throughout the author's detention there (i.e. between 23 May 2000 and 12 September 2005) he requested no medical assistance on account of bodily injuries.

4.9 Regarding the author's allegations under article 14 of the Covenant, the State party argues that he himself freely admitted that he was in the apartment when the murders took place, that he did not report the crime to the authorities, and that he took the handbag from the crime scene. These facts by themselves are sufficient to convict him of theft and concealing a crime. The State party further submits that the court thoroughly examined the contradictory testimonies of all the co-accused, ordered several forensic examinations, examined a number of witnesses, and decided to convict the author after reviewing all the evidence against him. Thus, the court examined the guilt of each of the co-accused individually and discarded I.Y.'s statement incriminating the author. This decision was upheld on appeal. The State party provides copies of nine letters, including covering letters attached to the author's submissions to the courts and the courts' replies thereto,[11] to refute his claim regarding his inability to study the case file and to appeal the judgement.

4.10 Regarding the claim under article 19 (2) of the Covenant, the State party submits that under domestic law, the right of detainees or prisoners to "receive and impart information" is subject to certain limitations. For security reasons and to prevent information leaks or prison breakouts, the correspondence of detainees is reviewed (but not censored) by the authorities. Correspondence to the Parliamentary Human Rights

[9] *Ahmet Özkan and others* v. *Turkey* (judgement of 6 April 2004), application No. 21689/93, para. 338 referring, mutatis mutandis, to *Salman* v. *Turkey* (judgement of 27 June 2000), application No. 21986/93, para. 132; and *Öcalan* v. *Turkey* (judgement of 12 March 2003), application No. 46221/99, paras. 224 and 228.

[10] The medical file contains a copy of the author's blood test and several records indicating that he was seen 10 times by a psychiatrist and twice by a dentist, followed by a note saying "there are no complaints" and a diagnosis saying "mentally healthy; psychotherapeutic discussion conducted". According to an affidavit issued by the head of the SIZO medical unit, the author had his heart and chest X-rayed annually between 2000 and 2005 and these were diagnosed as normal.

[11] The covering letters indicate that the author sought to study the trial transcript (10 May 2001), sent his initial appeal (14 May 2001) and two additional appeals (21 May and 1o July 2001), and requested to study the co-convicts' appeals (24 May and 20 July 2001). On 6 and 10 July 2001 the Regional Court granted him leave to study the case file, and on 20 August 2001 it granted him leave to study the co-convicts' appeals. On 29 July 2003, the author requested a copy of the trial transcript from the Regional Court. On 12 August 2003, the Regional Court informed him that domestic legislation does not provide for such a practice.

Commissioner, the prosecutor and the European Court of Human Rights is not subject to review. The State party provides copies of covering letters of 19 complaints sent by the author from the SIZO and the copies of the replies received, as certified by his signature.

Author's additional submissions and comments on the State party's observations

5.1 On 15 and 25 January and 15 and 24 March 2006, the author submitted that the application to the European Court of Human Rights had been filed by his mother without his knowledge. On 6 February 2006, he asked the Court to withdraw his application. On 6 March 2006, the Court discontinued it.

5.2 On 23 February, 28 February, 24 March, 7 July and 12 July 2006, 7 January 2007 and 23 February 2009, the author submitted his comments on the State party's observations. He reiterates his initial claims and argues that in its observations, the State party merely referred to national law, without explaining how it applies in practice.

5.3 He emphasizes that the State party provided copies of the covering letters attached to his complaints to different authorities, but not his complaints or the replies received. Had it provided all those documents, they would have defeated its arguments on the availability of effective remedies. Furthermore, although the State party claims that he has filed about 40 complaints, he has filed at least twice as many. As he did not receive any reply to many of them, he believes that they never reached the addressees.

5.4 The author maintains that his rights under article 7, together with article 4 (2), of the Covenant have been violated. He submits that the State party has deliberately omitted to address his complaints regarding the forced confession and reiterates that he consistently raised this issue during the pre-trial investigation, in the Regional Court and the Supreme Court. Even if he has no medical evidence in support, he was effectively prevented from obtaining such evidence due to the refusal, by the State Department for the Execution of Sentences and the Prosecutor's Office, to order a medical examination.

5.5 He reiterates that he was beaten in the SIZO, both individually and in group beatings, by the Special Rapid Response Unit of the State Department for the Execution of Sentences. The group beatings took place monthly, from 2002 to 2004.

5.6 The author reiterates his claims about being handcuffed and blindfolded while being escorted to the Supreme Court, and adds that his head was covered by a hood on which there was the dried blood and saliva of those who had worn it before. He feared that he might contract tuberculosis or other diseases. The handcuffing during the examination of his appeal made him feel humiliated and debased. There was no reason for keeping him in a cage in the courtroom. He refutes the State party's argument that handcuffing is permitted under domestic law.[12]

5.7 Furthermore, he was effectively prevented from exercising his right to defend himself, because with his hands handcuffed behind his back, he could not hold or turn over the pages of his additions to his appeal, which he intended to read out in the Supreme Court. The presiding judge rejected the author's request to take the additions and read them out on his behalf.[13]

5.8 The author refutes the State party's claim that he was provided with medical assistance and maintains that he was not examined by a competent doctor prior to his transfer to the Gorodishche colony (the "GVK-96 prison"). He had his lungs X-rayed in the

[12] He claims a violation of article 7 of the Covenant.

[13] He claims a violation of article 14 (1) and (3) (b) and (d) of the Covenant.

SIZO after discovering that his inmate had tuberculosis. He argues that the State party provided fake medical certificates, as they do not bear his signature.

5.9 He does not deny that he was present at the crime scene on 13 May 2000, witnessed the murders and took the handbag from the apartment. Even if, according to the State party, this may amount to theft and the concealment of a crime, it cannot justify his conviction of murder.

5.10 The author submits that on 4 July 2006, the administration of the GVK-96 prison attempted to conduct a medical examination, allegedly at the request of the Human Rights Committee. However, when the head of the medical unit refused to document even the most obvious injuries sustained after the torture, such as several missing teeth and other injuries, the author declined to undergo the examination.

5.11 He questions the voluntary nature of the SIZO inmates' affidavits as submitted by the State party, and notes that the documents' similarity suggests that they were written under pressure.

5.12 He submits that he complained of unlawful actions by police officers on 9 February 2005 to the Minister of the Interior. Two of the three officers identified by him as torturers were in fact dismissed when they tortured a suspect to death in 2003 but Khmelnitsk Regional Prosecutor's Office covered up this incident, passing it off as a natural death; the third officer involved was dismissed for the same reason in 2002.

5.13 On an unspecified date, the author requested Izyaslav District Prosecutor's Office to institute criminal proceedings against the three aforementioned officers. On 19 October 2006, a deputy prosecutor rejected his request, because he had failed to make the same complaint during the pre-trial investigation and in court. On 3 November 2006, the author appealed this refusal to Izyaslav District Court and submitted evidence of torture by the police officers. On 30 December 2006, his appeal was rejected with reference to the Regional Court's judgement of 8 May 2001, according to which "allegations about having given a self-incriminating testimony due to allegedly unlawful methods of investigation could not be taken into account for lack of evidence". The author's appeal of 16 February 2007, to the Regional Court, against the ruling of 30 December 2006, was still pending.

5.14 Finally, the author complains that the current conditions of detention in the GVK-96 prison violate article 10 (1) and (2) of the Covenant. His "outdoor walks" take place in a suspended cage with no natural lighting. Due to his height, he cannot exercise inside the cage and has vertigo looking down from the cage. The prison cells are covered with mould, there is no regular water supply and he is not allowed to purchase a toilet lid. Every ten days, he is transferred to another cell previously occupied by inmates with tuberculosis and HIV/AIDS. He is not allowed to lie down during the day. While moving inside the penitentiary, inmates have to bend towards the floor with their hands handcuffed behind their back. Outside of the building, inmates are hooded.

Author's additional submission

6.1 In the Committee's letter of 21 July 2010, the author was invited to provide clarifications regarding his case. On 9 August and 13 September 2010, he explained that after his arrest on 15 May 2000, he was detained at the Izyaslav district police station for nine to ten days prior to his transfer to the SIZO. He was shifted between the SIZO and the police station every other week for the three years of the pre-trail investigation. Such shifts were aimed at putting him under pressure, both psychologically and physically.

6.2 He provides the names, military rank and position of three police officers employed at the district police station who battered him upon his arrest.

6.3 The author explains that he did not confess to the murder despite the torture. He challenges the accuracy of the summary of his appeal, in the Supreme Court's ruling, regarding the use of duress to confess, and explains that the Supreme Court distorted the wording of his appeal to plot a case against him, as did the police officers.[14]

6.4 He reiterates that S.P. witnessed his torture at the district police station.

6.5 He clarifies that he was first transferred to the SIZO nine to ten days after his arrest on 15 May 2000. He unsuccessfully requested the SIZO medical unit to record his torture marks. He still suffers from violent physical after-effects of the torture. After the prosecutor's visits to the SIZO, pressure was put on him, both psychologically and physically, which impaired his preparation for the hearings. Furthermore, the prosecutor instructed the SIZO staff to "demoralize" him.

6.6 The author recalls that after his conviction, he requested to study the trial transcript. He was given a pile of documents. Since he was handcuffed while studying the transcript, he could not take notes. Subsequently, he filed multiple complaints, to the Regional Court and the Prosecutor's Office, outlining missing information, such as the expert's conclusion that O.P. had been stabbed by a left-handed person. He also complained that SIZO officers had hindered his access to the transcript, by handcuffing him. No response followed, and he was not provided with a copy of the transcript.

6.7 The author explains that his reference to article 255 of the Code of Criminal Procedure in connection with his request to have access to the case file was due to his lack of legal knowledge. However, his request clearly indicated that he sought to study the case file.

6.8 He submits that his comments on the trial transcript have been concealed by the authorities. He raised this matter in his additional appeals. He asks the State party to clarify why his comments remain unanswered. His request to attend the court hearing of 17 September 2001, when the comments on the transcript were examined, disappeared. Furthermore, he was only informed of the hearing on 19 September 2001.[15]

6.9 One evening at the beginning of November 2001, the author was escorted from the SIZO to the Supreme Court. The trip lasted over 24 hours, during which time he was handcuffed and, at times, hooded.[16]

6.10 A State-appointed lawyer represented him on appeal before the Supreme Court. The author complained before the investigator and the court that the lawyer was not interested in defending his interests.[17] However, as he could not afford to retain a lawyer privately, the

[14] The author explains that on the second day after his arrest, the officers asked him to sign unknown documents; when he refused, they beat him. Furthermore, they filmed the Head of Unit explaining to him how to show, on a mannequin, fractured neck vertebrae, while, in disagreement, he was pushing the mannequin away. As he did not confess guilt, he was tortured and carried to his cell thereafter, which was witnessed by inmates whose names he does not recall. When the videotape was shown in court, I.Y. testified that the author had broken O.P.'s neck. The author asked the court to use the record as evidence of torture and to initiate proceedings against the Head of Unit. In reply, the court questioned the Head of Unit. When the experts' conclusions showed that O.P.'s neck was not fractured, the investigator, in collusion with the police, plotted another indictment and the judge removed all mention of the record from the case file. The author claims that the removal of the videotape from the case file violates articles 7 and 14 (1) and (2) of the Covenant.

[15] He claims that the facts in paragraphs 6.6 to 6.8 above violate articles 14 (1) and (2) of the Covenant. He claims a violation of article 14 (1) of the Covenant, as the authorities failed to notify him of his right to attend a court hearing of his case.

[16] He claims a violation of article 7 of the Covenant.

[17] He claims a violation of article 14 (3) (g) of the Covenant.

State-appointed lawyer remained assigned to him. The author adds that the lawyer was a retired former colleague of the authorities.

6.11 He claims that during the examination of his appeal by the Supreme Court, he complained orally of his ill-treatment during the pre-trial investigation, in the SIZO and while being escorted to the court.[18]

6.12 He explains that the trial court judge ignored his requests to speak out, to ask questions and to record testimonies in favour of his innocence, and that I.Y. had incriminated him. The author wanted to secure the presence at court of I.Y.'s cellmates, to whom I.Y. had described the murder, and of those who had witnessed the after-effects of the torture on the author; he could not recall the witnesses' names.

6.13 The author claims that the Regional Court's decision of 8 May 2001 is plotted, as it does not reflect I.Y.'s withdrawal in court of his allegations, made during the pre-trial investigation, that the author had been implicated in the murder. Instead, the Regional Court based the author's conviction on I.Y.'s allegations.

6.14 He keeps no copy of the regional media publications identifying him as a murderer.

6.15 He has not brought separate proceedings regarding the publication and broadcast of the incriminating statements against him. However, he indicated in some of his additional appeals that such information had been published and broadcast.[19]

6.16 The author clarifies that the court's use of I.Y.'s initial testimony as a witness was inadmissible in terms of the commentary on article 68 of the Code of Criminal Procedure, under which anyone can be a witness in a criminal case, except parties to the proceedings interested in their outcome, such as victims, suspects, the accused or convicts.

6.17 The author invites the Committee to request the State party to provide information regarding the date of his transfer to the GVK-96 prison, his complaints about the conditions of detention there, the outcome of such complaints, and corroborating documents.

State party's additional comments

7.1 In the Committee's note verbale of 21 July 2010, the State party was requested to provide clarifications and supporting documents.

7.2 On 29 December 2010 and with reference to the author's further information of 13 September 2010, the State party provided comments made by its Supreme Court (undated) and Regional Court (dated 10 December 2010).

7.3 Regarding the alleged distortion of his appeal in the ruling of 27 November 2001, the Supreme Court submits that it dismissed the appeals by the author and his counsel; that the author's guilt was established by corroborating evidence; and that his acts were rightly qualified and his sentence was lawful. He attended the appeal hearing and had numerous opportunities to speak out and defend himself. The Supreme Court, therefore, examined the author's appeal in compliance with the applicable criminal procedure legislation and it has abided by the provisions of the Covenant.

7.4 The Regional Court explains that, as transpires from the trial transcript, after the pronouncement of the sentence, the presiding judge explained to the convicts, including the author, the appeal procedure, and their right to study the trial transcript and comment thereon. On 6, 9 and 10 July 2001, the author studied the trial transcript, which is confirmed

[18] He claims a violation of article 7 of the Covenant.

[19] He claims a violation of 14 (2) of the Covenant.

by his signature, he made no comments. The comments made thereon by S.P. and I.Y. were duly examined by the court.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether or not it is admissible under the Optional Protocol to the Covenant.

8.2 The State party has submitted that the Committee is barred from considering the present communication, as an identical complaint has been filed with the European Court of Human Rights. The Committee notes, however, that the application in question was discontinued on 6 March 2006 at the author's request. In these circumstances, the Committee is not precluded by article 5 (2) (a) of the Optional Protocol from examining the present communication.

8.3 Regarding the exhaustion of domestic remedies, the Committee has noted that according to the information submitted by the author in his initial submission, all available domestic remedies have been exhausted. In the absence of any pertinent information from the State party, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

8.4 The Committee notes that the author claims a violation of his rights under article 2 (3) (a) of the Covenant, without clarifying the nature of the violation of this provision. It observes that article 2 of the Covenant lays down general obligations for States parties, and, in principle, cannot, in isolation, give rise to a separate claim in a communication under the Optional Protocol.[20]

8.5 With regard to the author's allegations of a breach of article 4 (2), the Committee notes that the State party has not purported to rely on any derogation from provisions of the Covenant pursuant to article 4.[21] Accordingly, the Committee considers this part of the communication incompatible with the provisions of the Covenant, and therefore inadmissible under article 3 of the Optional Protocol.

8.6 The Committee notes the author's arguments in relation to article 7 that he was subjected to duress by police officers, to force him to confess guilt, and by the SIZO administration, to put pressure on him. The State party has rejected this claim, as no medical evidence was submitted by the author in support, and as the courts of two instances scrutinized the allegations of ill-treatment made by the author and his co-convicts and refuted them as unsubstantiated.

8.7 The Committee notes that, before his trial, the author was examined by a medical expert, who found no marks on his body consistent with beatings, and that the author has not challenged the fact that this examination took place. It also notes that both the Regional Court and the Supreme Court examined his allegation of duress and dismissed it for lack of evidence. The Committee notes that the material on file does not lead it to conclude that the determination made by the domestic courts was arbitrary or amounted to a denial of justice. Furthermore, it notes that the author's medical file does not show that he complained of the

[20] See, for example, communication No. 316/1988, *C.E.A.* v. *Finland*, decision of 10 July 1991, para. 6.2; communication No. 802/1998, *Rogerson* v. *Australia*, Views adopted on 3 April 2002, and communication No. 1213/2003, *Sastre Rodriguez et al.* v. *Spain*, decision of 28 March 2007, para. 6.6.

[21] Communication No. 139/1983, *Hiber Conteris* v. *Uruguay*, Views adopted on 17 July 1985, para. 7.5.

beatings inflicted upon arrest or in detention at any point during his detention in the SIZO between 23 May 2000 and 12 September 2005. In addition, he refused to undergo a medical examination on 4 July 2006, while claiming that the marks of the torture were visible. In addition, to the extent that he claims that the doctor refused to document his injuries, the Committee notes that there is no material before it to demonstrate that the author has challenged such a refusal before the domestic authorities or in court.

8.8 The Committee further takes note of the documents provided by the State party showing that following the transmittal of the author's complaints, an internal inquiry was conducted which confirmed the domestic courts' conclusions that the author had not been subjected to ill-treatment aimed at forcing a confession from him, and that he did not complain, from the SIZO, of ill-treatment or humiliation. It also notes, with reference to the documents provided by the author, that there is no evidence that he attempted to institute criminal proceedings in relation to this attempted forced confession during the pre-trial investigation. Likewise, he has provided no evidence that he brought his claim regarding ill-treatment during his detention in the SIZO to the attention of the domestic authorities. To the extent that he may be understood as complaining of his inability to submit such claims in writing, as he was handcuffed while his case was heard by the Supreme Court, the Committee notes that there is nothing in the material before it to conclude that the author was not able to file such complaints from the SIZO.

8.9 In the circumstances, and in light of the subsisting inconsistencies, and in the absence of any further evidence in support of the author's allegations of duress, under article 7 of the Covenant, the Committee considers that it cannot conclude that the author has sufficiently substantiated this claim for the purposes of admissibility, and therefore declares it inadmissible under article 2 of the Optional Protocol.

8.10 The Committee notes the author's claim that blindfolding him with a hood and handcuffing him during his transportation to the Supreme Court amounted to a violation of article 7 of the Covenant. The Committee also notes that the State party has denied the claim of blindfolding the author during the transportation; it also stated that such a measure may only be used in exceptional circumstances, for the purpose of the security of the individual transported, and is subject to authorization, which in this particular case was not requested. The Committee further notes that although in his subsequent submissions the author reiterated his claim, no additional information was provided in support. It also remains unclear whether the author took any action or brought any complaint to the attention of the domestic authorities or courts on this matter. The Committee further notes that the State party did not deny the allegation that it handcuffed the author during the transportation but that it referred to the national legislation providing that detainees may be handcuffed when being escorted in order to prevent escape or injury, and that life prisoners in particular shall be handcuffed every time that they are escorted. The Committee observes that the author has not provided specific information or arguments to explain why handcuffing him during the transportation in order to prevent his escape would constitute cruel, inhuman or degrading treatment within the meaning of article 7 of the Covenant. In light of this, the Committee cannot conclude that the author's claims regarding his treatment during transportation have been sufficiently substantiated, and therefore declares them inadmissible under article 2 of the Optional Protocol.

8.11 The Committee further notes the author's claims, which potentially raise issues under articles 14 (1) and (3) (b), (e) and (g) of the Covenant, that the courts based his conviction on assumptions, on contradictory evidence, particularly that of I.Y., and on evidence obtained under duress, and rejected his requests to obtain additional expert examination and the attendance and examination of witness. The Committee observes that these claims amount primarily to an evaluation of facts and evidence, and recalls its jurisprudence that it is generally for the relevant domestic courts to evaluate facts and

evidence in a particular case, unless it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice.[22] It considers that the materials before it do not suggest that the courts acted arbitrarily in evaluating the facts and evidence in the author's case or that the proceedings were flawed and amounted to a denial of justice.

8.12 In particular, the Committee notes that in light of the contradictory submissions and the material on file, in the absence of a copy of the trial transcript, it remains unclear whether, in fact, the author confessed to the murder at any stage of the domestic proceedings. Even if he did testify against himself, the Committee notes that the courts had established his guilt on the basis of a multitude of corroborating evidence. It notes the State party's argument that his conviction was based on a thorough review, by the courts of two instances, of contradictory testimonies of the co-accused, who were examined individually, witnesses' statements, and the results of several forensic reports, and that the courts rejected I.Y.'s statement incriminating the author. It also notes, in reference to the Supreme Court's decision, that, when establishing the author's guilt, the Supreme Court took into consideration the testimonies of the victims' relatives and the records from the crime scene examination. Furthermore, the Committee observes that nothing demonstrates that the author sought to obtain the attendance and examination of other witnesses at any stage of the proceedings or that his requests to this effect were not entertained. In the circumstances, the Committee considers the claims under articles 14 (1) and (3) (b), (e) and (g) of the Covenant to be insufficiently substantiated and therefore inadmissible under article 2 of the Optional Protocol.

8.13 The Committee further notes the author's claims regarding a violation of his rights of defence because he was denied access to his criminal case file and because his ex officio lawyers were ineffective, which potentially raises issues under article 14 (3) (b) and (d) of the Covenant. The Committee notes that, as established by the Supreme Court, a new lawyer was appointed to the author on 22 June 2000, as soon as contradictions appeared in his and I.Y's testimonies. It further notes that nothing in the material before it shows that the author ever requested a change of lawyer at any point of the proceedings.

8.14 The Committee notes the State party's submission that the author studied the trial transcript on 6, 9 and 10 July 2001, as attested by his signature, and that he did not file comments thereon. With reference to the documents provided by the State party, it notes that he was granted leave to study the case file on 6 and 10 July 2001. It further notes, in light of the material before it, that the author's submission that his comments on the trial transcript were concealed by the authorities is not supported by evidence. It further notes that he never claimed in court that his right to be acquainted with his case file, to study the trial transcript or to defend himself had been violated. It also notes that he was represented by a lawyer in the Supreme Court, and that, with regard to the quality of the legal assistance, nothing demonstrates that he ever requested to have another lawyer appointed. Accordingly, the Committee considers the claims under article 14 (3) (b) and (d) of the Covenant insufficiently substantiated, and therefore declares them inadmissible under article 2 of the Optional Protocol.

[22] See, for example, communication No. 1834/2008, *A.P.* v. *Ukraine*, decision of inadmissibility of 23 July 2012, para. 8.12; communication No. 1212/2003, *Lanzarote Sánchez* v. *Spain*, decision of inadmissibility of 25 July 2006, para. 6.3; communication No. 1616/2007, *Manzano et al.* v. *Colombia*, decision of inadmissibility of 19 March 2010, para. 6.4; communication No. 1771/2008, *Gbondo Sama* v. *Germany*, decision of inadmissibility of 28 July 2009, para. 6.4; communication No. 1758/2008, *Jessop* v. *New Zealand*, Views adopted on 29 March 2011, para. 7.11; and communication No. 1532/2006, *Sedljar and Lavrov* v. *Estonia*, Views adopted on 29 March 2011, para. 7.3.

8.15 The Committee notes the author's claim regarding the conditions of detention in the SIZO, which potentially raises issues under article 10 of the Covenant. It takes note of the State party's argumentation in this regard and the affidavits that it produced in support, including statements by the author's inmates, and the results of on-the-spot verifications in the SIZO by a number of different authorities showing that the conditions of detention there were in compliance with the existing hygiene and sanitary norms that applied throughout the State party's penitentiary system. The Committee notes the number as well as the detailed and consistent nature of these affidavits. In addition, in light of their content, the Committee sees no reason to cast doubt on their veracity.

8.16 Insofar as the author may be understood as complaining of sharing, at times, a cell with two other inmates, including some infected with tuberculosis, the Committee notes that it has not been disputed by the author that on 8 July 2001, he requested the SIZO administration to "place anybody else" with him. It also notes that the author has not specified when and for how long he shared a cell with inmates infected with tuberculosis. In addition, it takes note of a letter dated 10 September 2005 in which the State Department for the Execution of Sentences denied that the author had ever been held together with inmates infected with tuberculosis. Furthermore, the Committee notes that, according to the author's medical case file and records, provided by the State party, he had his chest X-rayed on an annual basis in the SIZO between 2000 and 2005 and his lungs were not affected whatsoever. It notes that the author's mere allegation that these affidavits were false is not supported by any further explanations or documentary evidence.

8.17 Regarding the author's implicit claims of having been kept in solitary confinement, the Committee reiterates its general comment No. 20, under which prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7 of the Covenant.[23] It notes, however, that the author has not specified when exactly, and for how long, he was held in solitary confinement. Similarly, the author has not provided sufficient information as to the alleged violation of his rights as a former penitentiary official by being held at times together with ordinary criminals.

8.18 The Committee further notes the author's allegations, under article 10 (1) and (2) of the Covenant, regarding his conditions of detention in the GVK-96 penitentiary colony. It notes that the State party has not refuted these claims specifically. It also notes that the author, however, has not provided any explanations as to the claims he submitted in this regard with the competent domestic authorities, including with the courts, but instead asked the Committee to invite the State party to provide it with information in this connection.

8.19 In these circumstances, and in light of the subsisting inconsistencies and contradictions, the Committee concludes that the claims under article 10 of the Covenant concerning the author's conditions of detention in the SIZO and the GVK-96 penitentiary colony are insufficiently substantiated for the purposes of admissibility, and are therefore inadmissible under article 2 of the Optional Protocol.

8.20 The Committee further notes the author's claim regarding the dissemination of incriminating materials in the media prior to the court's final verdict in his case, which potentially raises issues under article 14 (2) of the Covenant. Despite its specific enquiry made with the author, however, the Committee has not received any documentary evidence to support these claims. In the absence of any other information or clarifications on file in this connection, and particularly in the absence of any explanation as to how, in practice, the media coverage regarding the murder had negatively impacted on the author's rights,

[23] See general comment No. 20.

the Committee considers that this claim is insufficiently substantiated and therefore inadmissible under article 2 of the Optional Protocol.

8.21 The Committee has noted the author's remaining claims to the effect that his rights under articles 7 and 14 (1) and (3) (b) and (d) of the Covenant have been violated because, as his hands were handcuffed, he could not take notes while studying the trial transcript in the SIZO, and he could not read out or use his written additions to his cassation appeal in the Supreme Court. It also notes that the author was kept handcuffed in a metal cage in the courtroom during the examination of his appeal by the Supreme Court. The Committee notes that, in fact, these allegations raise issues under articles 7 and 14 (1) and 3 (b) of the Covenant. Given that these claims remained unaddressed by the State party in its observations, the Committee considers that due weight must be given to the author's allegations as far as they are sufficiently substantiated. Accordingly, it concludes that this part of the communication is admissible as raising issues under articles 7 and 14 (1) and (3) (b) of the Covenant and proceeds to its examination on the merits.

Consideration of the merits

9.1 The Human Rights Committee has considered the communication in light of all the information made available to it by the parties, as provided under article 5 (1) of the Optional Protocol.

9.2. The issues before the Committee are whether the author's handcuffing and placement in a metal cage during the examination of his appeal by the Supreme Court subjected him to degrading treatment, for the purposes of article 7 of the Covenant, and violated his right to a fair trial free from prejudice, as provided for under article 14 (1) of the Covenant, and whether the handcuffing while he studied the trial transcript in the SIZO and during the examination of his appeal by the Supreme Court resulted in a violation of his right to be provided with the necessary facilities for the preparation of his defence, as guaranteed by article 14 (3) (b) of the Covenant. The Committee recalls that the prohibition in article 7 is complemented by the positive requirements of article 10 (1) of the Covenant, which stipulate that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."[24] It also recalls its general comment No. 21, which places on the State party a positive obligation to guarantee the human dignity of all persons deprived of their liberty and to ensure that they "enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment."[25] In addition, the Committee recalls its general comment No. 32, according to which "it is a duty for all public authorities to refrain from prejudging the outcome of a trial [...] Defendants should normally not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals",[26] as this may result in a violation of article 14 (1). The Committee further notes that article 14 (3) (b) of the Covenant contains important elements designed to guarantee the principles of a fair trial, including the right of the accused to access and use the documents that are necessary for the preparation of the defence.

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[24] General comment No. 20, para. 2.

[25] General comment No. 21 (1992) on humane treatment of persons deprived of their liberty, para. 3, *Official Records of the General Assembly, Forty-seventh session, Supplement No. 40* (A/47/40), annex VI, sect. B.

[26] General comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 30, *Official Records of the General Assembly, Sixty-second Session, Supplement No. 40*, vol. I (A/62/40 (Vol. I)), annex VI; and communication No. 2120/2011, *Kovaleva and Kozyar* v. *Belarus*, Views adopted on 29 October 2012, para. 11.4.

9.3 The Committee notes that the State party has not specifically addressed these allegations and has failed to demonstrate that the measures imposed on the author were consistent with articles 7, 14 (1) and 14 (3) (b) of the Covenant. In particular, it failed to demonstrate that placing the author in a metal cage during the public trial at the Supreme Court, with his hands handcuffed behind his back, was necessary for the purpose of security or the administration of justice,[27] and that no alternative arrangements could have been made consistent with the human dignity of the author and with the need to avoid presenting him to the court in a manner indicating that he was a dangerous criminal. The State party also failed to demonstrate that handcuffing the author while he was studying the trial transcript or during the examination of his appeal by the Supreme Court was consistent with his right to have adequate facilities for the preparation of his defence. Accordingly, and in the absence of other pertinent information on file, the Committee concludes that the facts as presented reveal a violation of the author's rights under article 7 of the Covenant, on account of the degrading treatment inflicted on him during the trial; a violation of his rights under article 14 (3) (b) of the Covenant, on account of the interference with the preparation of his defence; and a violation of his rights under article 7 in conjunction with article 14 (1) of the Covenant, on account of the degrading treatment which affected the fairness of his trial.

10. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the State party has violated the author's rights under articles 7 and 14 (3) (b), and article 7 together with article 14 (1) of the Covenant.

11. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including compensation, and to introduce the necessary modifications to its laws and practice so as to prevent similar violations from occurring in the future.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant, and that pursuant to article 2 of the Covenant, the State party has undertaken to ensure for all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when a violation has been established, the Committee wishes to receive from the State party, within 180 days, information concerning the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them translated into Ukrainian and widely disseminated in Ukrainian and Russian in the State party.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

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[27] According to principle 1 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), all persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person. Furthermore, under principle 36, paragraph 2, of the Body of Principles, the arrest or detention of such a person pending investigation and trial shall be carried out only for the purposes of the administration of justice on grounds and under conditions and procedures specified by law. The imposition of restrictions upon such a person which are not strictly required for the purpose of the detention or to prevent hindrance to the process of investigation or the administration of justice, or for the maintenance of security and good order in the place of detention shall be forbidden.